

REMARKS

Claims 1-13 and 19-22 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter.

Claims 1, 10, 14, 15, 18, 19 and 22 are being amended. The amendments to claim 1 are support at least by paragraphs 25, 28, 34 and 36 of the application. No new matter has been added.

Claims 10, 12-13, 18 and 22 were rejected under U.S.C. § 102(e) as allegedly anticipated by US Pat. No. 6,721,941 B1 ("Morshed"). Claims 1-9, 14-17 and 19-21 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Morshed in view of Johnson (The Application Response Management (ARM) API, Version 2). Claim 11 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Morshed in view of US Pat. No. 6,633,908 B1 ("Leymann").

Reexamination and reconsideration of the action are requested in light of the foregoing amendments and the following remarks.

Rejection of Claims 1-13 and 19-22 under 35 U.S.C. § 101

In order to expedite prosecution and without conceding that the rejection is correct, the applicant has amended independent claims 1 and 10 by replacing "information carrier" with "machine-readable storage device".

In rejecting claim 19, its dependent claims 20-21, and claim 22, the examiner wrote:

Claims 19-22 are directed to system or apparatus claims, however, bodies of the claims fail to recite any physical article or object to meet the requirement of being manufacture or system claims.
See MPEP 2106-2107.

The applicant respectfully calls the examiner's attention to page 2100-7 of the MPEP, which explains how the claim language should be read.

"Where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function. Two *en banc*

decisions of the Federal Circuit have made clear that the USPTO is to interpret means plus function language according to 35 U.S.C. § 112, sixth paragraph.” MPEP § 2106 page 2100-7 (Rev. 5, Aug. 2006) (emphasis added)

Independent claims 19 and 22 each use means-plus-function language to recite the features of the respective claimed inventions. Consequently, these claims, and dependent claims 20-21, do recite physical articles and objects, as the MPEP explains, and the rejection under section 101 is improper.

Accordingly, the applicant respectfully submits that the rejections under section 101 should be withdrawn.

Claims 2-9, 11-13 and 20-21 depend from claims 1, 10 and 19. In addition to any independent basis for patentability, claims 2-8, 10-14 and 17-27 are patentable by virtue of at least such dependency.

Rejection of Claims 10, 12-13, 18 and 22 under 35 U.S.C. § 102(e)

The applicant respectfully traverses the rejection of claim 10, its dependent claims 12 and 13, claim 18 and claim 22 as set forth below.

Claims 10, 18 and 22 are independent claims that are each directed to an agent that gathers process data from at least one instance of a separate and independent process and transfers the process data to a central system.

The Morshed reference discloses a method and a computer program product for monitoring execution of a software application by instrumenting the program code of the software application and including a number of monitoring operations within the application process flow.

The applicant respectfully disagrees with the rejection of claims 10, 18 and 22 for the following reasons.

The examiner asserts that Morshed describes the claimed features of “receiving a specification of a predetermined condition,” citing col. 35, lines 34-38, and “collecting process

data items associated with a component upon the occurrence of the predetermined condition,” citing col. 36, lines 13-22 and col. 52, lines 20-39.

What Morshed actually describes in the cited passages is part of the functionality of an application being monitored, including event registration, information collection and transfer to a specific point. Morshed describes a technique for gathering execution information about a software application which relies on the developer's instrumenting the application code (col.33, lines 28-30). This may be accomplished applying hooks or callbacks provided by a particular translator (i.e., compiler that binds and translates the application source code to machine executable code) to transfer control to monitoring software (col. 2, lines 26-39). Specifically, in the first sentence after the one cited by the examiner, Morshed states that the IChannelHook routine may be used for event registration. IChannelHook is a Microsoft Visual Studio specific interface which provides a mechanism to intercept and modify calls when the COM engine processes the calls.

In the first passage cited by the examiner Morshed teaches the registration of particular events, but does not suggest receiving a predetermined condition specification that identifies the events. Morshed does not describe or suggest any way of managing the conditions and the means for collecting execution data other than through instrumenting the software application code.

In the rest of the passage quoted by the examiner Morshed describes part of the functionality of a software application. The execution of the application is altered by passing control to a monitor DLL, which is part of the structure of the monitored client process (col. 35, lines 23-24). Claim 10, as amended, clearly recites a computer program product that is separate and independent from the monitored process. The claim also recites that the process data stream is not altered. Claims 18 and 22 have corresponding limitations.

Therefore, the applicant respectfully submits that the rejections of claims 10, 18 and 22 and their dependent claims should be withdrawn.

Rejection of Claims 1-9, 14-17 and 19-21 under 35 U.S.C. § 103(a)

Claims 1, 14, 15 and 19 are independent claims that are each directed to a system that receives process data from at least one instance of a separate and independent process, collected by an agent, and is operable to reconstruct a corresponding process instance.

The applicant respectfully disagrees with the examiner's rejection of claims 1, 14, 15 and 19 for the following reasons:

The examiner asserts that Morshed describes the claimed features of "receiving process data items," citing col. 36 lines 18-22, and "each having been collected by an agent (monitor DLL)," citing col. 35, lines 62-65 and col. 36 lines 13-22.

The monitor DLL that Morshed teaches in the cited passages is part of the monitored process (col. 35, lines 23-24). With the occurrence of the predefined condition, control is passed to the monitor DLL, in other words, the process execution flow is altered to collect execution data. This is a result of the developer's instrumenting the application code (col. 33, lines 28-30). Claims 1, 14, 15 and 19, as amended, recite that the data stream of the process being monitored is not altered by the agent during the collection of process data items.

Further the examiner asserts that Morshed describes the claimed features of, "for each process data item, identifying a process instance with which the process data item is associated," citing col. 38, lines 34-42, and "grouping the process data items that are associated with a first process instance into a first group," citing col. 46, lines 17-19 and col. 38 lines 34-42.

The cited passages of Morshed describe a mechanism for correlating the collected process data items using the identifier of the corresponding client process. A single local collector (reference 1034 in Morshed) could receive process data from multiple client processes, executed on a single system (col. 36, lines 18-22). The identification and the correlation that Morshed describes are by the different client processes in a process session. In contrast, claims 1, 14, 15 and 19 as amended recite identifying a process instance, i.e., a single execution of the process being monitored.

Further, the examiner relies on Johnson to teach an agent collecting data from an executing process and combines Johnson with Morshed. The applicant respectfully submits that

Johnson cannot be combined with Morshed as the examiner has done. Using a separate outside program for the purposes required by Morshed is not possible because in Morshed the DLL is part of the process to be monitored (col. 35, lines 23-24) and therefore part of the process flow. As the applicant has explained in reference to claim 1, the monitored process in the claims is separate from and independent of the monitoring agent, and the data stream of the monitored process is not altered by the agent. This is not the case with Morshed.

Therefore, the applicant respectfully submits that the rejection of claims 1, 14, 15 and 19 should be withdrawn.

The examiner rejected claim 2 stating that "Johnson teaches modeling a process based on the reconstruction of the first process instance (an application could have a few critical sessions redesigned; page 2, last paragraph)." In fact, what Johnson describes is reprogramming the monitored process. Reprogramming the application is not the same as generating a reconstruction of a process instance based on process data items (as recited in claim 1) and then modeling the process based on the reconstruction of the process instance, as recited in claim 2. Therefore the applicant respectfully submits that the rejection of claim 2 should be withdrawn.

Claims 2-9 depend from claim 1, claims 16-17 depend from claim 15 and claims 20-21 depend from claim 19. In addition to any independent basis for patentability, these dependent claims are patentable by virtue of at least this dependency.

The applicant respectfully submits that the independent claims 1, 14, 15 and 19 as amended and dependent claims 2-9, 16-17 and 20-21 are in condition for allowance.

Drawings

The Applicants respectfully request that the Examiner indicate that the drawing sheets FIGS 1-10 filed on March 24, 2004, are acceptable.

Conclusion

For the foregoing reasons, the applicant submits that all the claims are in condition for allowance.

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By responding in the foregoing remarks only to particular positions taken by the examiner, the applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, the applicant's selecting some particular arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist. Finally, the applicant's decision to amend or cancel any claim should not be understood as implying that the applicant agrees with any positions taken by the examiner with respect to that claim or other claims.

Please apply any otherwise unpaid charges or any credits to deposit account 06-1050.

Respectfully submitted,

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